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3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF OREGON
6 PORTLAND DIVISION

7 HARVEY SALOUM,)
8)
9 Plaintiff,) No. 03:11-cv-00900-HU
10 vs.)

11 TERRY WRIGHT, Tillamook Chief of) **FINDINGS AND RECOMMENDATION**
12 Police, and CITY OF TILLAMOOK,) **ON MOTION FOR SUMMARY JUDGMENT**
13 Defendants.)
14
15

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HUBEL, United States Magistrate Judge:

The plaintiff Harvey Saloum brings this action against Terry Wright in his capacity as Tillamook Chief of Police, and against the City of Tillamook, alleging violations of his civil rights in connection with his arrest on December 8, 2009, and events leading up to the arrest.¹ Currently before the court is the defendants' Motion for Summary Judgment. Dkt. #45. Saloum opposes the motion. Dkt. #48. Neither party requested oral argument. The undersigned submits the following Findings and Recommendation for disposition of the case pursuant to 28 U.S.C. § 636(b)(1)(B).

SUMMARY JUDGMENT STANDARDS

Summary judgment should be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c)(2). In considering a motion for summary judgment, the court "must not weigh the evidence or determine the truth of the matter but only determine whether there is a genuine issue for trial." *Playboy Enters., Inc. v. Welles*, 279 F.3d 796, 800 (9th Cir. 2002) (citing *Abdul-Jabbar v. General Motors Corp.*, 85 F.3d 407, 410 (9th Cir. 1996)).

The Ninth Circuit Court of Appeals has described "the shifting burden of proof governing motions for summary judgment" as follows:

The moving party initially bears the burden of proving the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). Where the non-moving party bears the burden of proof at trial, the moving party

¹Dkt. #29, Third Amended Complaint.

1 need only prove that there is an absence of
 2 evidence to support the non-moving party's
 3 case. *Id.* at 325, 106 S. Ct. 2548. Where the
 4 moving party meets that burden, the burden
 5 then shifts to the non-moving party to desig-
 6 nate specific facts demonstrating the exis-
 7 tence of genuine issues for trial. *Id.* at
 8 324, 106 S. Ct. 2548. This burden is not a
 9 light one. The non-moving party must show
 10 more than the mere existence of a scintilla of
 11 evidence. *Anderson v. Liberty Lobby, Inc.*,
 12 477 U.S. 242, 252, 106 S. Ct. 2505, 91 L. Ed.
 13 2d 202 (1986). The non-moving party must do
 14 more than show there is some "metaphysical
 15 doubt" as to the material facts at issue.
 16 *Matsushita Elec. Indus. Co., Ltd. v. Zenith*
 17 *Radio Corp.*, 475 U.S. 574, 586, 106 S. Ct.
 18 1348, 89 L. Ed. 2d 528 (1986). In fact, the
 19 non-moving party must come forth with evidence
 20 from which a jury could reasonably render a
 21 verdict in the non-moving party's favor.
 22 *Anderson*, 477 U.S. at 252, 106 S. Ct. 2505. In
 23 determining whether a jury could reasonably
 24 render a verdict in the non-moving party's
 25 favor, all justifiable inferences are to be
 26 drawn in its favor. *Id.* at 255, 106 S. Ct.
 27 2505.

15 *In re Oracle Corp. Securities Litigation*, 627 F.3d 376, 387 (9th
 16 Cir. 2010).

17 **BACKGROUND FACTS**

18 "How much time he saves who does not look to see what his
 19 neighbor says or does or thinks."² This case arises from two
 20 neighbors - the plaintiff Harvey Saloum ("Saloum") and his next
 21 door neighbor Robin Boardman ("Boardman") - who failed to heed
 22 those wise words. The following facts are undisputed, except where
 23 noted.

24 From approximately 2005 to 2009, Saloum ("Saloum") and his
 25 family lived in a single-family residence on Donald Place in
 26

27 ²Marcus Aurelius, second century Roman Emperor and philoso-
 28 pher.

1 Tillamook, Oregon, next door to Boardman and his wife Shelley.
2 Saloum and Boardman had known each other for over fifty years, and
3 enjoyed a friendly relationship until they had a falling out
4 sometime in 2007. Around that time, Saloum began to suspect that
5 Boardman was receiving Social Security disability benefits despite
6 continuing to work. Although not entirely clear, it appears that
7 Saloum reported his suspicions to someone, resulting in an
8 investigation into the matter; at least, Boardman believed the
9 investigation was the result of Saloum's actions.³

10 In late December 2008, or early January 2009, Boardman had a
11 conversation with the defendant Terry Wright, Chief of Police for
12 the City of Tillamook, Oregon. Boardman mentioned his suspicions
13 regarding the audit of his disability benefits. Boardman stated he
14 thought Saloum was "crazy," and he claimed Saloum was following or
15 stalking him. Wright suggested to Boardman that he begin keeping
16 a log of these incidents. Boardman also installed a video surveil-
17 lance system at his home.⁴

18 On January 5, 2009, Wright went to Saloum's residence and
19 spoke with him about Boardman's allegations. Saloum denied
20 stalking Boardman, but indicated he was taking some photographs of
21 Boardman to protect himself because he believed Boardman was
22 "coming after [him] for slander."⁵ According to Saloum, Wright
23 told him, "I have enough evidence against you that any judge would
24

25 ³See Dkt. #29, Third Amended Complaint, ¶¶ 6-8.

26 ⁴Dkt. #29, ¶ 8; Dkt. #47, Defendants' brief in support of
27 their motion for summary judgment, p. 4.

28 ⁵Dkt. #49-2, Depo. of Harvey Saloum, ECF p. 7; Dkt. #29, ¶ 8.

1 file a stalking complaint against you.”⁶ Wright explained some of
2 the problems that could arise if a judge issued a stalking order
3 against Saloum, and he explained the effect of a Stalking
4 Protective Order, including the possibility that Saloum and his
5 family would have to move.⁷ Because he did not want to be
6 arrested, Saloum told Wright he would stop the activities that were
7 upsetting Boardman.⁸

8 Saloum claims that over the next few months, the Boardmans
9 would call Wright directly (as opposed to calling the general line
10 for the police department), regarding “any perceived neighborly
11 problems” between the parties. Saloum cites as examples an
12 occasion when his grandson accidentally kicked a ball into the
13 Boardmans’ yard, and an occasion when Saloum’s granddaughter wrote
14 with chalk on the sidewalk. According to Saloum, Wright responded
15 to these “insignifican[t]” complaints himself, going to Saloum’s
16 residence to confront Saloum about them.⁹

17 On or about March 12, 2009, Saloum contacted Wright to
18 complain that Boardman had been exposing himself within view of
19 Saloum’s granddaughter’s window, and also had exposed himself to
20 Saloum’s wife. According to Saloum, Wright refused to talk with
21 Saloum about the complaint.¹⁰ Wright dispatched Officer Nicholas
22

23 ⁶Dkt. #49-2, Saloum Depo., ECF p. 8.

24 ⁷Dkt. #47, Defs’ brief, p. 4; Dkt. #29, ¶ 8.

25 ⁸Dkt. #47, Defs’ brief, p. 4; Dkt. #49-1, Depo. of Terrence
26 John Wright, ECF p. 21.

27 ⁹Dkt. #29, ¶ 9.

28 ¹⁰Dkt. #49-2, Saloum Depo., ECF pp. 14-15.

1 Troxel to follow up on Saloum's complaint.¹¹ Saloum asked Officer
 2 Troxel to talk with two witnesses - Doug Vogue and Pat Bunse - to
 3 corroborate his statements. Troxel spoke with Vogue, but could
 4 never reach Bunse or Boardman. Nevertheless, Troxel concluded that
 5 no crime had been committed, and no further action was taken.¹² On
 6 May 27, 2009, Troxel also investigated some type of criminal
 7 mischief complaint involving Saloum and Boardman. Troxel was aware
 8 at the time that Saloum and Boardman were "not getting along," and
 9 had "had a falling out."¹³

10 Saloum also complained to Wright about a "For Sale" sign that
 11 Boardman had "screwed into [a] telephone pole, in violation of a
 12 city ordinance."¹⁴ According to Saloum, the sign was still nailed
 13 to the pole five years later.¹⁵

14 Saloum claims he told Wright that it was actually Boardman who
 15 was stalking him, rather than vice versa. Saloum asserted Boardman
 16 was not credible, and the "Boardmans were unreliable witnesses with
 17 improper motives[.]"¹⁶ Saloum claims Wright was aware that the
 18 Boardmans had made similar allegations regarding stalking and
 19 criminal trespass against "a Spanish family that previously lived
 20
 21

22 ¹¹Dkt. #49-1, Wright Depo., ECF pp. 25-26; Dkt. #49-5, Depo.
 23 of Nicholas Troxel, ECF p. 31.

24 ¹²Dkt. #49-5, Troxel Depo., ECF p. 31.

25 ¹³Dkt. #49-5, Troxel Depo., ECF p. 34.

26 ¹⁴Dkt. #29, ¶ 10.

27 ¹⁵*Id.*

28 ¹⁶*Id.*, ¶ 11.

1 in the same Tillamook residence as the Saloums."¹⁷ Saloum believes
2 that family moved away due to the Boardmans' allegations.¹⁸

3 On November 19, 2009, Saloum received a work order from C&D
4 Rentals, to replace a vent on a house located on property referred
5 to as the "Christie property," which is adjacent to the Boardmans'
6 property.¹⁹ According to Saloum, C&D Rentals owns the Christie
7 property and the house that needed the work. The Boardmans lease
8 the Christie property, but not the house located on the property
9 that required the work. Saloum claims that in order to reach the
10 house to replace the vent, he had to travel through a portion of
11 the Christie property. Saloum parked his van near the house on the
12 Christie property. Saloum claims Mrs. Boardman "came out and began
13 yelling at [him], stating that she was going to have him
14 arrested."²⁰

15 Boardman called Wright to complain that Saloum "had parked his
16 van on their leased property."²¹ Wright went to the property to
17 speak to Saloum. According to Saloum, Wright blocked his vehicle
18 from leaving, "and immediately declared that he was going to tow
19 Mr. Saloum's vehicle."²² Saloum states he attempted to explain to
20 Wright that he had a work order and permission to be on the
21 property, but Saloum claims Wright "refused to listen," and "picked
22

23 ¹⁷*Id.*

24 ¹⁸*Id.*

25 ¹⁹*Id.*, ¶ 12.

26 ²⁰*Id.*

27 ²¹Dkt. #47, p. 5 (citing Dkt. #46-2, Wright Depo., ECF p. 47.

28 ²²Dkt. #29, ¶ 12.

up his phone and threatened that if he towed Mr. Saloum's vehicle, he was also going to have Mr. Saloum arrested."²³ According to Saloum, during the time Wright was speaking with him, Mrs. Boardman talked with the owner of the Christie property, confirmed that Saloum had permission to be there to complete the work order, and informed Wright of that fact, but Wright "still threatened to arrest Mr. Saloum."²⁴ Saloum claims Wright finally allowed him to move his van off the property when Saloum decided not to complete the work order.²⁵

A few hours later, Boardman contacted Wright to report that Saloum had followed him to the local branch of U.S. Bank.²⁶ It took Wright "[a] minute or so" to get to the bank.²⁷ When he arrived, he saw Saloum's "vehicle parked in front of the bank, and as [Wright] came up on the corner, [Saloum] started to pull away."²⁸ Wright did not see Boardman at the bank.²⁹ Saloum claims he went to the bank to use the ATM, and he never saw Boardman while he was at the bank.³⁰ The parties agree that soon after Saloum left the

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Dkt. #29, ¶ 13; Dkt. #47, p. 5 (citing Dkt. #46-2, Wright Depo., ECF p. 53).

²⁷ Dkt. #46-2, Wright Depo., ECF p. 53.

²⁸ *Id.*, ECF p. 54.

²⁹ *Id.*

³⁰ Dkt. #29, ¶ 13.

1 bank, Wright pulled him over for failing to signal before turning.³¹
2 According to Saloum, Wright asked him why he had been at the bank,
3 and Saloum showed Wright his ATM receipt. Saloum claims Wright
4 accused him of following Boardman "and holding Mr. Boardman hostage
5 at the U.S. Bank."³² Saloum claims Wright "threatened" him, telling
6 him "he was not permitted to be at U.S. Bank while Mr. Boardman was
7 there."³³

8 Wright gives a different version of his conversation with
9 Saloum. At his deposition, Wright stated he and Saloum had a
10 cordial conversation, calling each other by their first names, and
11 Wright again tried to explain to Saloum that a "normal person"
12 could take Saloum's actions as bothersome. Wright claims he was
13 trying to impress upon Saloum that he "really didn't want this to
14 get to the point where one side or the other filed a stalking
15 complaint or took more serious action against the other side or -
16 either that or something bad happen."³⁴

17 Saloum alleges, "It was later established that no phone calls
18 were made to defendant Wright about any incident occurring at U.S.
19 Bank but that defendant Wright and the Boardmans had made four
20 calls to each other 45 minutes before defendant Wright had pulled
21 Mr. Saloum over for the alleged traffic violation. Defendant
22 Wright also did not investigate any alleged allegations of stalking
23 by reviewing the ATM footage, the alleged eye witness, or bank
24

25 ³¹*Id.*; Dkt. #46-2, Wright Depo., ECF p. 54.

26 ³²Dkt. #29, ¶ 13.

27 ³³*Id.*

28 ³⁴Dkt. #46-2, Wright Depo., ECF p. 55.

1 tellers. He did not try to verify the alleged complaints made by
2 the Boardmans and remained biased against Mr. Saloum."³⁵

3 On December 1, 2009, Boardman petitioned for a Stalking
4 Protective Order against Saloum, alleging Saloum was following him,
5 intimidating him, spreading lies about him, and causing stress to
6 Boardman and his wife.³⁶ Saloum believed Wright "served as a
7 witness" for Boardman's petition, but the Boardmans and Wright
8 testified Wright was not involved in the petition.³⁷ A Temporary
9 Stalking Order was entered by the Tillamook County Circuit Court,
10 and a show cause hearing was scheduled for December 8, 2009.³⁸
11 Among other things, the temporary order stated Saloum could "enter,
12 remain and exit his residence without violating [the] order[, but
13 he could not] stand on his property and stare at [Boardman, or]
14 exit the easement when traveling to and from his residence."³⁹ A
15 Tillamook County Sheriff's Deputy served Saloum with the Temporary
16 Stalking order on December 3, 2009, while Saloum was preparing to
17 move from his residence.⁴⁰ Saloum put the order in his pocket, and
18 did not read it until a couple of days later.⁴¹

20 ³⁵Dkt. #29, ¶ 13.

21 ³⁶*Id.*; Dkt. #47, p. 5. In Oregon, stalking protective orders
22 are issued pursuant to ORS § 30.866.

23 ³⁷*Compare* Dkt. #29, ¶ 15, with Dkt. #47, p. 5 (citing
24 depositions of Boardman and his wife, and Wright).

25 ³⁸Dkt. #46-2, ECF pp. 97-101.

26 ³⁹*Id.*, ECF p. 98.

27 ⁴⁰Dkt. #29, ¶ 15; Dkt. #47, p. 5.

28 ⁴¹Dkt. #29, ¶ 15; Dkt. #47, pp. 5-6 (citing the Saloums'
depositions).

1 The Saloums began their move from Tillamook to Portland. On
2 December 8, 2009, Saloum was at the Tillamook residence to finish
3 up the move and clean the residence. The defendants claim Saloum
4 "drove his van to the residence, parked the van, unhooked his
5 utility trailer, and moved the trailer."⁴² However, the pages of
6 Saloum's deposition cited by the defendants in support of this
7 statement are not attached as exhibits to either party's motion
8 papers. In any event, Mr. and Mrs. Boardman and an individual
9 named Steve Mathies claim they watched Saloum unhook his utility
10 trailer, and "drive[] his van well into the driveway of Mr. Board-
11 man in violation of the Stalking Protective Order."⁴³ Boardman
12 claims Saloum knew exactly where the property line was between his
13 and Saloum's property because Saloum and Boardman worked together
14 to build a fence between their properties. In addition, Boardman
15 claims the property line is clearly delineated by a surveyor's
16 marker.⁴⁴ Boardman claims he called the police immediately after
17 he saw Saloum drive onto his property.⁴⁵ Boardman eventually talked
18 with Wright and reported that he had seen Saloum unhook his
19 trailer, and then drive "straight in" onto Boardman's property,

23 ⁴²Dkt. #47, p. 6 (citing Saloum Depo. at 141-42).

24 ⁴³*Id.* (citing Dkt. #46-1, Boardman Depo., ECF pp. 88-89, 93);
25 see Dkt. #46-1, Boardman Depo., ECF pp. 91-93.

26 ⁴⁴*Id.* (citing Dkt. #46-1, Boardman Depo., ECF p. 89; Dkt. #46-
27 1, Saloum Depo., ECF p. 16).

28 ⁴⁵Dkt. #47, pp. 6-7 (citing Dkt. #46-1, Boardman Depo., ECF pp.
93-95).

1 where Saloum allegedly sat for about 30 seconds before backing out
2 again.⁴⁶

3 Wright first learned of Boardman's complaint when he returned
4 to his office after handling another matter. Because Boardman
5 alleged Saloum had violated a stalking protective order, Wright
6 went to the courthouse and obtained a copy of the stalking order,
7 which he had been unaware of before that time.⁴⁷ He then returned
8 Boardman's phone call, and also called and spoke to Mr. Mathies.
9 According to Wright, Boardman told him Saloum "had pulled his white
10 van into their property about 25 to 30 feet, at least, the length
11 of the full-size van, and then backed out and pulled onto his own
12 property."⁴⁸ Boardman indicated this had been witnessed by himself,
13 his wife, and Mr. Mathies.⁴⁹ Mathies gave an almost identical
14 account of the events.⁵⁰

15 Wright went to Saloum's residence to confront him about
16 Boardman's allegations. He did not have a warrant for Saloum's
17 arrest.⁵¹ According to Wright, he did not obtain a warrant because
18 violation of a stalking order is "a mandatory arrest" under Oregon
19
20
21

22 ⁴⁶*Id.*, p. 6 (citing Dkt. #46-1, Boardman Depo., ECF p. 92); see
23 Dkt. #46-1, Boardman Depo., ECF p. 96.

24 ⁴⁷Dkt. #46-2, Wright Depo., ECF pp. 61-65.

25 ⁴⁸*Id.*, ECF p. 64.

26 ⁴⁹*Id.*

27 ⁵⁰*Id.*, ECF pp. 66-67.

28 ⁵¹Dkt. #46-2, Wright Depo., ECF p. 73.

1 law.⁵² When he arrived, he saw a van and a car in Saloum's
 2 driveway. The door to Saloum's residence was open, but Saloum was
 3 not visible. Wright knocked, and Saloum appeared and walked up to
 4 the door. According to Wright, he told Saloum he was there because
 5 of a report that Saloum had been on the Boardmans' property. He
 6 read Saloum his rights, and told him that he was under arrest.⁵³
 7 Saloum claims Wright immediately stated he was under arrest before
 8 telling him why.⁵⁴ Saloum claims he had just returned from running
 9 errands, including a trip to a local recycling center.⁵⁵ When
 10 Wright stated Saloum was under arrest, Saloum asked for permission
 11 to make one phone call, and to put away some tools that were lying
 12 outside the Saloum residence. Wright claims that normally would
 13 not be allowed, but he "went ahead and took the high road and
 14 allowed [Saloum] to make a phone call and then to start putting
 15 stuff away."⁵⁶ While he was waiting for Saloum, Wright called
 16 Boardman to clarify how far Saloum had pulled onto the Boardman
 17 property. Wright claims Boardman told him Saloum had pulled almost
 18 all the way up to Boardman's garage.⁵⁷ When Wright told Saloum of
 19 Boardman's allegation, Saloum denied having been on the Boardmans'
 20 property, and claims he asked Wright to check the footage from the

21
 22 ⁵²*Id.* See ORS § 133.310(3) (mandating arrest of a person
 23 believed to have violated a properly filed and served stalking
 protective order).

24 ⁵³*Id.*, ECF pp. 69-70.

25 ⁵⁴Dkt. #29, ¶ 16.

26 ⁵⁵*Id.*

27 ⁵⁶Dkt. #46-2, Wright Depo., ECF p. 70.

28 ⁵⁷*Id.*

1 Boardmans' surveillance camera which would verify Saloum's version
 2 of the events.⁵⁸ According to Saloum, Wright never attempted to
 3 view the surveillance footage, and the Boardmans later destroyed
 4 the footage.⁵⁹ Boardman testified in his deposition that he, his
 5 wife, and Mr. Mathies viewed the security footage on his DVR, but
 6 he was unable to make a copy of it due to his "operator
 7 inability."⁶⁰

8 Wright placed Saloum under arrest, handcuffed him, and took
 9 him to the Tillamook County Jail.⁶¹ Saloum was not permitted to
 10 take his headache medication while he was in the jail. After his
 11 release at 4:18 p.m., Saloum took his medication.⁶²

12 Wright's police report for December 8, 2009, indicates
 13 Boardman called to report Saloum's alleged actions at "0942."⁶³
 14 Saloum claims he attempted to show Wright receipts indicating he
 15 was at the recycling center between 9:19 a.m. and 10:13 a.m., but
 16 Wright refused to "acknowledge [this] explanation and proof."⁶⁴
 17 Saloum alleges Wright initially came to his Tillamook residence at
 18 about 10:00 a.m., but found Saloum was not home, so he returned
 19 "around 11:48 a.m., no less than two minutes after Mr. Saloum had
 20

21 ⁵⁸Dkt. #29, ¶ 17.

22 ⁵⁹*Id.*

23 ⁶⁰Dkt. #46-1, Boardman Depo., ECF p. 92.

24 ⁶¹Dkt. #46-2, Wright Depo., ECF pp. 70-71; Dkt. #29, ¶¶ 16, 19.

25 ⁶²Dkt. #47, p. 7 (citing Dkt. #46-1, Saloum Depo., ECF p. 34);
 26 see Dkt. #46-1, Saloum Depo., ECF pp. 34-35.

27 ⁶³Dkt. #46-2, ECF p. 83.

28 ⁶⁴Dkt. #29, ¶ 18.

1 returned to his residence.”⁶⁵ Saloum alleges Wright failed to
 2 investigate Boardman’s report prior to arresting him, and refused
 3 to speak with “potential witnesses about exculpatory evidence.”⁶⁶
 4 He argues Wright intentionally omitted to include these facts in
 5 his police report because they would have “shown that Mr. Saloum
 6 did not violate the protective stalking order.”⁶⁷

7 After Saloum bonded out of jail, he asked Wright if he could
 8 return to his Tillamook residence to finish moving out. According
 9 to Saloum, Wright threatened him with a \$30,000 fine if Boardman
 10 “even thought that Mr. Saloum was looking at him.”⁶⁸ Saloum claims
 11 a witness, Doug Vogue, overheard his conversation with Wright.
 12 Saloum contacted a friend who worked for the City of Tillamook, and
 13 according to Saloum, his friend contacted Wright and arranged for
 14 Saloum to be able to finish moving out of his Tillamook residence.⁶⁹

15 A formal charge was lodged against Saloum on December 17,
 16 2009, for allegedly violating a stalking order by coming into
 17 Boardman’s visual presence.⁷⁰ The case was tried to a jury on
 18 September 14, 2010, and Saloum was acquitted of the charge.⁷¹
 19 Circuit Judge Rick W. Roll, who presided over the criminal trial,
 20 also presided over the civil contempt proceeding against Saloum for

21
 22 ⁶⁵*Id.*

23 ⁶⁶*Id.*

24 ⁶⁷*Id.*

25 ⁶⁸*Id.*, ¶ 20.

26 ⁶⁹*Id.*

27 ⁷⁰Dkt. #46-1, ECF pp. 38-39.

28 ⁷¹Dkt. #29, ¶ 21; Dkt. #47, p. 8.

1 his alleged violation of the stalking protective order. On
2 October 11, 2010, Judge Roll issued a written opinion⁷², finding the
3 Boardmans had proved that Saloum had violated the stalking order by
4 knowingly engaging in repeated and unwanted contact with the
5 Boardmans, with an intent to alarm or coerce Boardman and his
6 immediate family. Saloum was ordered to pay the Boardmans'
7 attorney's fees in connection with the civil proceeding, and Judge
8 Roll ordered Saloum to submit to a mental health evaluation, and
9 any treatment directed by the evaluator.⁷³ Saloum alleges Wright
10 gave inconsistent testimony during the criminal and civil
11 proceedings, deliberately contradicting his prior police reports.⁷⁴

12 Saloum further alleges he was in Tillamook on November 1,
13 2010, and Boardman followed him, driving by the place where Saloum
14 was staying at least five times. Saloum claims he reported this to
15 the Tillamook police, but no officer ever returned his phone call.
16 He also alleges Boardman showed up unannounced at Saloum's place of
17 worship in Portland on occasion. Saloum reported this to Wright,
18 and according to Saloum, "Wright informed [him] that Mr. Boardman
19 could follow Mr. Saloum and have Mr. Saloum arrested."⁷⁵

20 Saloum claims he suffered economic damages as a result of
21 having to move from his Tillamook residence due to Wright's
22 actions. He also claims he "suffered mental and physical anguish,

25 ⁷²Dkt. #46-2, ECF pp. 104-13.

26 ⁷³*Id.*

27 ⁷⁴Dkt. #29, ¶ 22.

28 ⁷⁵*Id.*, ¶ 23.

1 frustration, inconvenience, and humiliation," as a result of
2 Wright's actions.⁷⁶

3
4 ***SALOUM'S CLAIMS***

5 Based on the above facts, Saloum brings three claims under 42
6 U.S.C. § 1983, for violations of his constitutional rights:
7 (a) "Arrest Without Probable Cause," in which Saloum asserts a
8 claim based on Wright's allegedly "illegal and unconstitutional"
9 conduct, and a claim against the City of Tillamook due to Wright's
10 position as "a policymaker for the City"; (2) "Malicious
11 Prosecution," alleging Saloum's prosecution was based on Wright's
12 false testimony, and his "incomplete and inaccurate police report,"
13 depriving Saloum of "equal protection of the law and property
14 without due process of law"; and (3) "Equal Protection Violation,"
15 alleging Saloum was treated differently because of his ethnic
16 background.

17 The defendants move for summary judgment on each of Saloum's
18 claims, arguing Wright had probable cause to arrest Saloum for
19 violation of the stalking protective order; because probable cause
20 existed, the ensuing criminal proceedings against Saloum did not
21 constitute malicious prosecution; and Wright did not treat Saloum
22 differently from others due to his ethnic background. Further,
23 Wright claims he is entitled to qualified immunity. Regarding
24 Saloum's claims against the City, the City argues Saloum has failed
25 to show there was any formal governmental policy, or longstanding
26 practice or custom, to support liability under *Moneill v. New York*

27
28 ⁷⁶*Id.*, ¶ 24.

1 *Dep't of Social Servs.*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d
 2 611 (1978), nor has Saloum established any failure of training for
 3 the City's police officers that would support liability.

5 **DISCUSSION**

6 I address Saloum's third claim first because the facts
 7 indicate it is totally baseless. Saloum, whose national origin is
 8 Middle Eastern, bases his disparate treatment claim on the fact
 9 that Wright and the other Tillamook Police officers are Caucasian,
 10 and they "established a clear pattern of providing services to the
 11 Boardmans, who were Caucasian, while simultaneously denying equal
 12 services to Mr. Saloum[.]" Dkt. #48, p. 26. Saloum has failed to
 13 offer evidence to show the existence of a genuine issue for trial
 14 on this claim. He has not, for example, cited instances of
 15 racially-suggestive slurs or derogatory comments made by Wright or
 16 other Tillamook officers. At Saloum's deposition, he was asked if
 17 any of the Tillamook police officers treated him in a way he felt
 18 was dismissive because of his race or discriminated against him.
 19 Saloum responded, "Absolutely not."⁷⁷ Saloum's wife Lesley
 20 similarly testified she did not believe Wright had discriminated
 21 against Saloum due to his ethnic background.⁷⁸ Saloum has offered
 22 nothing more than "naked assertion[s]" devoid of "further factual
 23 enhancement" to support this claim. *Iqbal*, 556 U.S. at 678, 129
 24 S. Ct. at 1949. The defendants' motion for summary judgment should
 25 be granted as to Saloum's Third Claim.

27 ⁷⁷Dkt. #46-1, Saloum Depo., ECF p. 17.

28 ⁷⁸Dkt. #46-1, Lesley Saloum Depo., ECF pp. 55-56.

Turning to Saloum's false arrest and malicious prosecution claims, both claims turn on whether Wright had probable cause to arrest Saloum for violating the stalking protective order. See *Biolchini v. City of Bend*, 2010 WL 5891613 at *4 (D. Or. Dec. 28, 2010) (Coffin, MJ) ("To move forward on 42 U.S.C. § 1983 and state law false arrest claims, a plaintiff must establish that his arrest was not supported by probable cause.") (citing *Cabrera v. City of Huntington Park*, 159 F.3d 374, 380 (9th Cir. 1998); *Bacon v. City of Tigard*, 81 Or. App. 147, 147 (1986) "(clarifying that probable cause is a complete defense to a false arrest claim)"). In another case involving the alleged violation of a stalking protective order, Chief Judge Aiken of this court recently discussed the standards for determining whether probable cause exists:

Probable cause to arrest exists when the facts and circumstances within the arresting officer's knowledge are sufficient to warrant a prudent person to believe that a suspect has committed, is committing, or is about to commit a crime. *United States v. Hoyos*, 892 F.2d 1387, 1392 (9th Cir. 1989). The question is whether the arresting officer's actions are objectively reasonable in light of the facts and circumstances confronting him, without regard to his underlying intent or motivation. *Graham v. Connor*, 490 U.S. 386, 397[, 109 S. Ct. 1865, 1872, 104 L. Ed. 2d 443] (1989).

Wilson v. Lane County Sheriff's Office, slip op., 2012 WL 6738279 at *3 (D. Or. Dec. 21, 2012).

Here, the facts under which Wright acted are not in dispute. Wright testified that upon receipt of Boardman's complaint, he verified the existence and terms of the temporary stalking protective order, and he spoke with Boardman, and also with the third-party witness Mathies. Under Oregon law, a peace officer is specifically directed to make a warrantless arrest and take a

1 person into custody if the officer has probable cause to believe
2 that a stalking protective order has been issued; the order has
3 been served properly, and proof of service has been filed⁷⁹; and the
4 "person to be arrested has violated the terms of that order." ORS
5 § 133.310(3). Here, the facts are sufficiently developed for the
6 court to conclude Wright had an objectively reasonable belief that
7 Saloum had violated the temporary stalking protective order.
8 Therefore, Saloum's false arrest claim fails. In addition, because
9 lack of probable cause is one of the elements Saloum must prove to
10 prevail on his malicious prosecution claim, see *Blandino v.*
11 *Fischel*, 179 Or. App. 185, 191, 39 P.3d 258, 261 (2002), that claim
12 also fails. The defendants' motion for summary judgment should be
13 granted on Saloum's First and Second Claims.

14 Further, even if Wright erred in concluding that probable
15 cause existed to arrest Saloum, he nevertheless would be entitled
16 to qualified immunity if his decision was reasonable, albeit
17 mistaken. See *Hunter v. Bryant*, 502 U.S. 224, 228-29, 112 S. Ct.
18 534, 537, 116 L. Ed. 2d 589 (1991) (citation omitted). The United
19 States Supreme Court has held that "[t]he qualified immunity
20 standard gives ample room for mistaken judgments by protecting all
21 but the plainly incompetent or those who knowingly violate the
22 law." *Hunter*, 502 U.S. at 229, 112 S. Ct. at 537 (internal
23 quotation marks, citation omitted). The *Hunter* Court explained
24 that "[t]his accommodation for reasonable error exists because
25

26
27 ⁷⁹As noted above, a Tillamook County Sheriff's Deputy served
28 Saloum with the Temporary Stalking order on December 3, 2009.
Saloum has not raised any issue about the filing of the proof of
service.

officials should not err always on the side of caution because they fear being sued.” *Id.* (internal quotation marks, citation omitted). As discussed above, the court finds Wright’s decision to arrest Saloum was reasonable. Saloum has presented no credible evidence that Wright knowingly violated the law. Thus, Wright is entitled to qualified immunity concerning his arrest of Saloum for violating the temporary stalking protective order.

Similarly, because Saloum has failed to show that his constitutional rights were violated, there is no basis for the City’s liability. He has failed to offer even a shred of evidence that the City of Tillamook had some official policy or custom that resulted in a deprivation of his constitutional rights. See *Monell*, 436 U.S. at 690-91, 98 S. Ct. at 2035-36 (“[T]he touchstone of [a] § 1983 action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution. . . .”).

In conclusion, the court finds Saloum has failed to show the existence of any genuine issue for trial on any of his claims. I therefore recommend the defendants’ motion for summary judgment be **granted**.

SCHEDULING ORDER

These Findings and Recommendations will be referred to a district judge. Objections, if any, are due by **February 25, 2013**. If no objections are filed, then the Findings and Recommendations will go under advisement on that date. If objections are filed, then any response is due by **March 14, 2013**. By the earlier of the

1 response due date or the date a response is filed, the Findings and
2 Recommendations will go under advisement.

3 IT IS SO ORDERED.

4 Dated this 6th day of February, 2013.

5
6 /s/ Dennis J. Hubel

7
8

Dennis James Hubel
Unites States Magistrate Judge